

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE ANNEX
1100 EAST MAIN STREET, SUITE 501
RICHMOND, VIRGINIA 23219-3517
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PATRICIA S. CONNOR
CLERK

TELEPHONE
(804) 916-2700

December 1, 2020

Frank G. Johns, Clerk
U.S. District Court
Western District of North Carolina
200 West Broad Street, Rm 100
Statesville, NC 28677

Re: *USA v. Robert Ivan Horton*
5:05-cr-00235-KDB-DCK-13

Dear Mr. Johns:

The enclosed notice of appeal was received by this court on November 24, 2020.

In accordance with Rule 4(d) of the Federal Rules of Appellate Procedure, the notice has been date stamped and is being forwarded to your court for appropriate disposition. *See* FRAP 4(d) ("If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.").

If this notice of appeal duplicates a notice already received by the district court, the notice need not be transmitted to this court a second time.

Yours truly,



Patricia S. Connor

PSC:dlg
Enclosures

cc: Robert Ivan Horton (w/ stamped 1st page)
 #20515-058
 Federal Correctional Institution - Edgefield
 P.O. Box 725
 Edgefield, SC 29824

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ROBERT IVAN HORTON,
PETITIONER,

V.

Case No. 5:05-cr-00235-KDB-DC

UNITED STATES OF AMERICA,
RESPONDENT,

RECEIVED
2020 NOV 24 PM 12:48
U.S. COURT OF APPEALS
FOURTH CIRCUIT

APPEAL OF THE DENIAL OF COUNSEL - DOCUMENT 903
PURSUANT TO SECTION 1291 OF THE JUDICIAL CODE

COMES NOW, Robert Ivan Horton, hereinafter known as the "Petitioner," proceeding pro se, to appeal the Order from the United States District Court for the Western District of North Carolina, Statesville Division, denying Petitioner's request for the appointment of counsel to assist with the request for a Section 3582(c)(2) motion for Reduction in Sentence under Section 404 of the First Step Act of 2018.

In support thereof, Petitioner avers the following:

01. Petitioner is a pro se litigant, and because of such, his pleadings should be accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *ERICKSON V. PARDUS*, 551 U.S. 89, 93-94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam).

02. The denial of counsel is appealable under 28 U.S.C. Section 1291, as a final collateral order on

the basis that the harm such a denial may cause can be irreparable on appeal of final judgment.

03. Where the district court denies an application for appointment of counsel, but does not dismiss nor deny the underlying petition, Petitioner can appeal that order immediately, rather than awaiting a ruling on the merits of the petitioner. A final decision in such a matter being one which ends the litigation on the merits of a matter a leaves nothing for the court to do but execute the judgment.

04. Appealability of denial of counsel hinges upon the following three factors, in addition to the underlying petition not being declared insufficient on its face:

(a) does the order conclusively determine[s] the disputed question[s]; (b) does the order resolve[s] an important issue completely separate from the merits of the action; and (c) does the order present a situation that is effectively unreviewable on appeal from a final judgment.

See MCFARLAND V. SCOTT, 512 U.S. 849, 856, 114 S. Ct. 2568, 129 L. Ed. 666 (1994).

05. The First Step Act of 2018, was passed by Congress and signed into law by President Donald J. Trump on December 21, 2018, Pub. L. No. 115-391, 132 Stat. 5194.

06. Specifically, as to the First Step Act, Section 404(b) of said act allows that "[a] court that imposed a sentence for a covered offense may . . . impose a reduced sentence as if Sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the covered offense was committed. Section 404(a) of the First Step Act of 2018 defines a "covered offense" as "a violation of a Federal criminal statute, the statutory penalties for which were modified by sections 2 or 3 of the Fair Sentencing Act of 2010 . . . that was committed before August 9, 2010.

07. Petitioner's claims are therefore nonfrivolous, the litigative need is crucial to satisfy the doctrine

of the law and prejudice will result in the form of ill-prepared or improperly prepared and presented assessments of the law that will not adequately or realistically and correctly reflect the degree or scope of the reduction of time of incarceration Petitioner may be entitled to. See UNITED STATES V. CRONIC, 466 U.S. 648, 658-60, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

08. Petitioner is a layman at the law, and not properly educated nor endowed with the resources to do a correct HUGHES analysis or to properly assimilate and integrate post-conviction Section 3553 factors that would be positive on his behalf.

09. Such a situation, moreover, would not only be of detriment to the Petitioner obtainment of a reduction in sentence, but should Petitioner proceed without the aid of counsel and ruling be made against him, such a situation would be uncorrectable from a final judgment, even where the ruling made against the Petitioner resulted from lack of clarity in some legal matter that the presence of counsel could have prevented. See HUGHES V. UNITED STATES, 138 S. Ct. 1765, 201 L. Ed. 2d 72; 2018 U.S. LEXIS 3385; 86 U.S.L.W. 4352; 27 Fla. L. Weekly S 306; 17-155 (June 4, 2018).

CONCLUSION

WHEREAS for the foregoing reasons, Petitioner prays that the Honorable United States Court of Appeals for the Fourth Circuit:

(1) VACATE the Order of the United States District Court for the Western District of North Carolina, Statesville Division, Docket Entry 903, DENYING the appointment of Counsel;

(2) REMAND the matter to the United States District Court for the Western District of North Carolina, Statesville Division, for corrective action and the appointment of Counsel in alignment with the opinion of the Honorable Court; and

4.

(3) GRANT WHATSOEVER other relief the Honorable United States Court of Appeals for the Fourth Circuit deem is just and proper, and equitable to the law.

I hereby certify that prior to 5:00 p.m. on 11/17/2020, I placed a true and correct copy of this Appeal of the Denial of Counsel - Document 903 Pursuant to Section 1291 of the Judicial Code, together with all attachments, exhibits, and supporting papers, in the United States mail in a properly-addressed envelope, with first class postage duly paid and affixed to the envelope and with the envelope addressed to:

Clerk of the Court

United States Court of Appeals for the Fourth Circuit

1100 East Main ST. Suite 501
Richmond, VA 23219-3525

Furthermore, I declare under penalty of perjury in accordance with 28 U.S.C. Section 1746 that all of the statements made in this document are true and correct and of my own first-hand knowledge. If called upon to testify as a witness in this matter, I could and would competently testify to each fact and factor set forth herein.

Respectfully submitted,

MR. Robert I. Horton

ROBERT IVAN HORTON 20515-058
FEDERAL CORRECTIONAL INSTITUTION
EDGEFIELD SOUTH CAROLINA
P.O. BOX 1725
EDGEFIELD - SOUTH CAROLINA - 29824

11-17-2020

DEAR ' U.S. COURT OF APPEALS '
FOURTH CIRCUIT.

THE FEDERAL BUREAU OF PRISONS ' HAS RESTRICTED
AND MODIFIED ALL MOVEMENT WITHIN THE B.O.P.
THIS PREVENTATIVE MEASURE TO ENSURE THE
HEALTH AND SAFETY OF STAFF AND INMATES ' HAS HIND-
ERED MY FILING OF THIS APPEAL.

THANKS,
MR. Robert L. Holt
20515-058

RECEIVED
2020 NOV 24 PM 12:48
U.S. COURT OF APPEALS
FOURTH CIRCUIT



UNITED STATES GOVERNMENT
Memorandum
FEDERAL BUREAU OF PRISONS

FCI Edgefield

Office of the Captain

Edgefield, South Carolina 29824

MEMORANDUM FOR INMATE POPULATION

//S//
FROM: J. R. Follis, Captain

SUBJECT: Modified Institutional Operations, COVID-19

Currently, we have several confirmed positive cases in the inmate population which affects all housing units. In response to this recent development, FCI Edgefield will remain secured with all inmates in their assigned cells until further notice. This is a preventative measure to ensure the health and safety of staff and inmates. Movement within the institution will be restricted to that which is necessary. Limited work details will be utilized as necessary. All inmates on work details will be tested and retested as necessary. Showers will be provided three (3) times per week. Inmates will be afforded the opportunity to make one (1) five-minute phone call during shower periods. Housing unit sanitation will be maintained according to the set sanitation standards. Pill and Insulin Line will be conducted in the housing units and medical will see inmates for emergent issues only. Commissary will continue to sell items from a modified list and inmates will be permitted to purchase paper, stamps, envelopes, hygiene items, OTC medications, and three (3) snacks. Laundry will be conducted on a set schedule for each housing unit. Psychology, Education, Recreation, and Religious Services staff will make regular housing unit rounds. Meals will continue to be delivered to the housing units and distributed by staff wearing appropriate PPE. All inmates are subject to change in cell or housing unit assignment at any time.

NOTIFICATION FOR INMATE POPULATION

Currently, we have inmates confirmed positive for COVID-19 throughout all housing units at the medium facility. As a preventative measure to ensure the health and safety of staff and inmates, all inmates will remain secured in their assigned cells until further notice. Limited inmate work details will be utilized as necessary. Inmates on these limited details will be tested for COVID-19 and released as necessary. Inmate cell assignment are subject to change at any time.

Meals:

- Meals will continue to be delivered to the housing units and distributed by staff.
- Staff are expected to don the proper PPE which includes a surgical mask, NOT A CLOTH FACIAL COVERING, and gloves.
- Inmates will directed to step to the back of the cell, staff will open the wicket, deliver the meal, and step away from the cell door. Staff will then direct the inmate to step to the front of the cell to retrieve the meal. Once the meal has been retrieved the inmate will be directed to step to the back of the cell. Staff will then close the wicket. This is to ensure 6 feet of social distancing can be maintained.

Showers:

- A 15 minutes shower time will ordinarily be provided three (3) times per week.
- Only one (1) cell on each tier will be out at a time. A maximum of four (4) inmates at one time will be released for showers (2 inmates upper tier; 2 inmates lower tier).
- Inmates under QUARANTINE status will shower alone.

Phones:

- During the 15 minute shower time on Wednesday, July 29, 2020, inmates will allowed a 5 minute phone call to advise their families they will be under a minimum 10 day quarantine. All phones will be turned off on Wednesday, July 29, 2020 at 8:00 p.m.
- Phones should be sanitized after each use by the Unit Orderly.
- Inmates under QUARANTINE will NOT be allowed to use the phone.

Unit Sanitation:

- Housing unit sanitation will be maintained according to the set sanitation standards. One (1) Unit Orderly will be assigned to continuously clean the showers, phones, and high touch areas during shower and phone periods.
- **NOTE:** Inmate orderlies CANNOT be out of their cell when any QUARANTINE inmate is let out to shower.
 - The inmate orderly can be let out at the conclusion of the shower for any quarantined inmate to clean any touched surfaces and the shower area. This shower will remain closed for cleaning and for an additional 10 minutes to observe the appropriate wet time. Wet Time: The time the surface needs to remain wet for the chemical to be effective.

Commissary Sales:

- Commissary will continue to sell items from a modified list through the end of the week to ensure all units have been shopped this week. At the conclusion, commissary sales will halt for the next 10 days.

Pill Line:

- Pill and Insulin Line will be conducted in the housing units and Health Services will see inmates for emergent issues only.

Laundry & Unit Supplies:

- Laundry will be conducted on a set schedule for each housing unit.
- Unit Supplies will be issued on a set schedule with the assistance of Unit Team staff.

Mask Mandate:

As a reminder, all inmates are expected to wear a face covering. Inmates not wearing a face covering will receive no out of the cell time.

Why am I stuck in this cell?

What is the "Corona Virus"?

Corona viruses have been around forever, but usually cause only a common cold, or other mild illnesses. This "Corona Virus" is related to other corona viruses, but is new and potentially much more dangerous. Not only is the illness it causes more deadly, but it is much, much more contagious (easier to catch).

COVID-19 is the name given to the illness caused by the Corona Virus. The Corona Virus causing the pandemic has been labeled SARS-Cov-2, so it can be distinguished for other strains of corona viruses.

Isn't it just like the Flu?

While the actual symptoms are very similar to the Flu, the Corona Virus is different in some key aspects:

People with the Flu usually feel sick within 1 day of catching it, and within a week they are no longer contagious.

People with the corona virus can be contagious for several days prior to onset of symptoms. Symptoms may not occur until almost a week after catching it if symptoms occur at all. Infected people may be contagious for up to 10 days after onset of symptoms. People who did not have any symptoms are considered no longer contagious 14 days after testing positive.

There is a vaccination available every year to decrease your risk of catching the Flu. Even if you do catch it, the vaccination may decrease the severity of illness.

There is no vaccination for the Corona Virus.

If you catch the Flu in the USA, there is about a 0.1% chance of dying from it (1 in 1000).

If you catch the Corona Virus in the USA, there is about a 4% chance of dying from it (1 in 25). In other words, you are 40 times more likely to die if you catch the Corona Virus, than if you catch the Flu.

How do you catch it?

The Corona Virus is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).

The Corona Virus seems to be spreading easily and sustainably in the community.

How does a mask help?

Masks may slow the spread of the virus.

The Corona Virus can be spread by people who do not have symptoms and do not know that they are infected. Masks provide an extra layer to help prevent the respiratory droplets from traveling in the air and onto other people.

Why do I have to stay in my cell?

Now that the Corona Virus is in our facility, it is critical that everyone practice social distancing (staying at least 6 feet away from other people) as much as is reasonably possible. Unfortunately, this means staying in cells most of the day until we stop getting new cases. By keeping healthy people where they are, and moving anyone with symptoms or a positive test to a separate unit, we hope to stop the spread of this disease and possibly **save lives**. Again, the key to ending the lockdown will be when we stop getting new positive tests for the Corona Virus. The CDC (Center for Disease Control) recommends we have at least 2 weeks with no new cases before the restrictions can be lifted. Agreeing to be tested for the virus when asked may speed up this process. The lockdown is difficult for everyone, but without the lockdown it is statistically likely that people at this facility will die. We don't want it to be **you**.

MEMORANDUM FOR INMATE POPULATION
FROM: J. R. Follis, Captain
SUBJECT: Modified Institutional Operations, COVID-19
August 14, 2020

Currently, we have slowed the confirmed positive cases in the inmate population which affects all housing units. FCI Edgefield will be resuming an enhanced modified schedule beginning Monday, August 17, 2020. Movement within the institution will continue to be restricted to that which is necessary. All inmates are subject to change in cell or housing unit assignment at any time. Limited work details will be utilized as necessary. All inmates on work details will be tested and retested as necessary.

- Meals will continue to be delivered to the housing units and distributed by staff wearing appropriate PPE.
- Each housing unit will conduct daily hygiene, sanitation, phone, and e-mail use.
 - Six cells will be allowed out at one time, totaling 30 minutes between the hours of 0630 and 2000.
- Inmates will be afforded the opportunity to make one (1) five-minute phone call as well as have access to the computers in the units during out of cell periods.
 - Only two (2) phones will be available for use. These phones will be located on opposite phone banks.
 - Phones will be sanitized following each use by a designated unit orderly.
- Housing unit sanitation will be maintained according to the set sanitation standards.
 - Two (2) Unit Orderlies will be assigned to continuously clean the showers, phones, and high touch areas during shower and phone periods.
- Commissary will continue to sell items from a modified list.
 - Inmates will be permitted to purchase paper, stamps, envelopes, hygiene items, OTC medications.
- Pill and Insulin Line will be conducted in the housing units and Health Services will see inmates for emergent issues only.
 - Call outs will be conducted for other services on Tuesdays and Thursdays.
- Laundry will be conducted on a set schedule for each housing unit.
- Psychology, Education, Recreation, and Religious Services staff will make regular housing unit rounds.

MR. ROBERT I. HORTON #20515-058
FEDERAL CORRECTIONAL INSTITUTION
EDGEFIELD SOUTH CAROLINA
P.O. BOX- 725
EDGEFIELD SOUTH CAROLINA
29824

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INSPECTED

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT.
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